IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.06.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE V. DHANAPALAN

WRIT APPEAL NO.560 of 2001

1. The Secretary to Government
   Housing and Urban Development
   Department
   Fort St. George, Chennai 9.

2. The Special Tahsildar
   (Neighbourhood Scheme) and Land
   Acquisition Officer, Nagercoil. .. Appellants
   (Respondents in WP NO. 10363/92)

vs.

1. P. Thangalakshmi
2. P. Janarthanan
3. P. Mathusoothana Perumal
4. P. Nagalingam
5. P. Sankaralingam
6. Gomathi .. Respondents (Petitioner in - do)

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mrs. Justice T. Meenakumari dated 10.12.1999 made in W.P.No.10363 of 1992.

(WP NO. 10363/92) Presented under article 226 of the constitution of India to issue a writ of certiorari calling for the records relating to the proceedings in G.O. Ms. No. 743, Housing and Urban Development Department dated 13.07.1990 and quash the same.

For appellants : Mr. M. Dhandapani
Addl. Govt., Pleader

For respondents: Mr. A. Sivaji

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JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal has been filed against the order of the learned single Judge dated 10.12.1999 made in W.P.No.10363 of 1992, in and by which the learned Judge, quashed the acquisition proceedings on the ground of violation of Rule 3(b) of the Tamil Nadu Land Acquisition Rules (in short "the Rules").

2. Heard the learned Additional Government Pleader for the appellants and Mr. A. Sivaji, learned counsel for the respondents.

3. In view of the limited issue, it is unnecessary for us to refer all the factual matrix as stated in the affidavit and counter affidavit.

4. The learned single Judge, after finding that Rule 3(b) of the Land Acquisition (Tamil Nadu) Rules, has not been fully complied with, interfered with the matter and allowed the writ petition. It is seen from the particulars furnished that enquiry under Section 5-A of the Land Acquisition Act, 1894 (in short "the Act") was conducted on 20.06.1991. It is not in dispute that the land owners/writ petitioners submitted their objection within the time as provided. They also participated in the enquiry. The particulars furnished in the counter affidavit show that the remarks of the requisitioning body was obtained only on 25.06.1991, i.e., after the enquiry under Section 5-A of the Act.

5. It is not in dispute that enquiry under Section 5-A of the Act was conducted on 20.06.1991. Rule 3 (b) of the Rules [(now Rule 4(b)] mandates that if any objection is received within the time prescribed, the same have to be forwarded to the requisitioning Department and on receipt of their remarks, the Land Acquisition Officer has to conduct enquiry. It further shows that in the enquiry the lands owners as well as representatives of the requisitioning body / Department are entitled to participate. The Courts have held that compliance of Rule 3(b) [(now Rule 4(b)] is mandatory and failure to follow the same would vitiate the acquisition proceedings. This aspect was considered by the learned Judge and rightly quashed the acquisition proceedings for non-compliance of Rule 3(b). Though in the counter affidavit particularly in para 4 the Deputy Secretary to Government, Housing Urban Development Department has stated that remarks of the

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requisitioning body have been communicated to the objectors, conveniently, the date has not been specifically stated. On the other hand, in the subsequent paragraph, viz., in para 6, the very same deponent has stated that enquiry under Section 5-A of the Act was conducted on 19.06.2001 and 20.06.1991 and the remarks of the requisitioning body was received on 25.06.1991. It is not clear that after receipt of remarks from the requisitioning body, whether further enquiry was conducted apart from the one conducted on 19.06.1991 and 20.06.1991 as stated in the counter affidavit. In such circumstances, we are in agreement with the conclusion arrived at by the learned Judge and we do not find any ground for interference. Accordingly, the appeal fails and the same is dismissed. No costs.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Housing and Urban Development
   Department
   Fort St. George, Chennai 9.

2. The Special Tahsildar
   (Neighbourhood Scheme)
   Acquisition Officer, Nagercoil.

+ one cc to the Government Pleader sr no. 25141
+ one cc to Mr. A. Sivaji, Advocate sr no. 25315

JRG(CO)
NM(22.06.2006)

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